



EMPLOYMENT TRIBUNALS

Claimant: Ms M McTigue

Respondent: University Hospitals Bristol NHS Foundation Trust

Heard at: Bristol **On: 6, 7, 8, 9 and 10 February 2017**
Members Meeting 23 and 24 February 2017

Before: Employment Judge O Harper
Members: Mr C D Harris
Mr C Williams

Representation:

Claimant: Mr J England, Counsel

Respondent: Mrs S Frazer-Butlin, Counsel

RESERVED JUDGMENT

The claim that the claimant was subjected to detriment pursuant to Section 47B of the Employment Rights Act 1996 for having made protected disclosures is dismissed.

REASONS

1. This is a claim by Ms M McTigue against University Hospitals Bristol NHS Foundation Trust for detriment pursuant to Section 47B of the Employment Rights Act 1996 for having made protected disclosures.
2. The claimant was not an employee of the respondent. She was an employee of an organisation called Tascor Medical Services Ltd ("Tascor"). That organisation had a contract with Avon and Somerset Constabulary to provide forensic examination services at a sexual assault referral centre ("SARC"). That SARC called The Bridge was based at the respondent's premises at the Central Health Clinic in Bristol. The claimant was employed as a Forensic Nurse. She therefore pursues her claim of detriment on the basis that she was a worker under the extended definition provided by section 43K of the Employment Rights Act 1996. The respondent no longer

disputes that the claimant falls within the definition of worker and is entitled to pursue a claim against the respondent.

3. The claimant's case is that over a period in time commencing in April 2013 until 24 February 2014 she made a series of disclosures orally, by email and in writing to her employer (via colleagues employed by Tascor) and to various individuals employed by the respondent (including Mrs D Burunou).
4. She contends that those communications amounted to disclosures of information tending to show that the health and safety of clients and staff at The Bridge was endangered or likely to be endangered because protocols for the booking of medical examinations were not being followed. She contends that the information also tended to show that the respondent and/or its employees were in breach or likely to be in breach of a legal obligation. Her case is that as a result of having made those disclosures she was subjected to treatment by Mrs Burunou which amounted to detriment and as a consequence she was no longer allowed by the Avon and Somerset Constabulary to provide services under the Tascor contract.
5. The case has been the subject of various case management hearings and orders. As a result the claimant provided detailed further particulars of both the detriments that she relied upon and the disclosures which she contends she made. The parties have agreed a list of issues. The list of disclosures and detriments has been amended during the hearing to take into account certain concessions made by the claimant in cross examination. Therefore the protected disclosures have been identified as comprising twenty-two verbal or written disclosures and the detriments now comprise fourteen different areas of detriment commencing in July 2013 and terminating on 27 March 2014. For ease of reference the agreed list of disclosures and detriments is attached to this Judgment.
6. The respondent denies the claim. It does not accept that the claimant made qualifying disclosures of information which tended to show that there was failure to comply with a legal obligation or that health and safety of staff and clients was endangered. If disclosures of information were made, it contends that she did not have a reasonable belief in the information disclosed and that it was unaware of any information that the claimant disclosed to her employer Tascor. It denies that the claimant was subjected to any detriment and if the claimant was subjected to detriment, any detriment was not on the ground of having made protected disclosures. It also contends that the claim has been presented out of time.
7. There is significant dispute as to what the claimant did or said in respect of the alleged disclosures. There is significant dispute as to whether certain detriments alleged occurred and significant dispute regarding the alleged conduct of Mrs Burunou and reasons for it. Much of the interaction between the claimant and Mrs Burunou has not been documented contemporaneously, or witnessed by independent parties and therefore the Tribunal has had to make findings of fact on that interaction based on the oral evidence.
8. The questions for the Tribunal to resolve in summary are:
 - Did the claimant make any disclosures of information?

- If so, were any of them qualifying disclosures?
- If so, were they protected disclosures?
- If so, was the respondent/Mrs Burunou aware of those protected disclosures?
- Was the claimant subjected to a detriment?
- If so, was she subjected to that detriment on the ground that she had made protected disclosures?
- Has the claim been presented in time?

9. The relevant statutory provisions are as follows:

Section 43B Employment Rights Act 1996 “ERA”

Disclosures qualifying for protection

(1) In this part a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of a worker making the disclosure, is made in the public interest and tends to show one or more of the following:

(b) A person has failed, is failing, or is likely to fail to comply with any legal obligation to which he is subject;

(d) that the health or safety of any individual has been, is being, or is likely to be endangered.

As the claimant is relying on disclosures made before 25 June 2013 as well as after that date, for those disclosures prior to 25 June 2013 the words 43B(1) “*that is made in the public interest*” are omitted.

Section 43C provides

Disclosure to employer or other responsible person

(1) A qualifying disclosure is made in accordance with this Section if the worker makes the disclosure:

(a) to his employer.

Section 47B provides

Protected disclosures

(1) A worker has the right not to be subjected to any detriment by any act, or deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.

Section 48 provides:

Complaints to Employment Tribunals

(1A) A worker may present a complaint to an Employment Tribunal that he has been subjected to a detriment in contravention of Section 47B.

(2) On a complaint under Sub Section (1A)... it is for the employer to show the grounds on which any, or deliberate failure to act, was done.

10. The Tribunal heard evidence from the claimant and from Ms E Painter, Dr Janet Young and Dr Alan Grant on her behalf.
11. On behalf of the respondent the Tribunal heard from Mrs D Burunou, Centre Manager, Assistant Chief Constable Sarah Crew of Avon and Somerset Constabulary and Ms Nicola Brooks Matron. The Tribunal had been presented with witness statements from Mrs C Taylor, HR Business Partner, Mr R Lewis, Associate Director of HR and Ms McNeil HR Consultant. Those statements were not adduced because the claimant made certain concessions during cross examination and withdrew certain allegations of detriment.
12. The Tribunal were referred to extensive documentation of two lever arch files and heard submissions. We were referred to the cases of :
 - *Korashi v Abertawe Bro Morgannwg University Local Health Board UKEAT/0424/09*
 - *Western Union Payment Services UK Ltd v Anastasi UKEAT/0135/13*
 - *Cavendish Munro Professional Risks Management Ltd v Goodall 2010 ICR 325*
 - *Blackbay Ventures Ltd (trading as Chemistree) v Gahir 2014 ICR 747*
 - *Fecitt and Others v NHS Manchester 2002 ICR 372*
 - *Reynolds v Clfis (UK) Ltd and Others 2015 ICR 1010*
 - *Royal Mail Group Ltd v Jhuti 2016 IRLR 854*
 - *The Co-Operative Group Ltd v Baddeley 2014 EWCA Civ 658*
 - *Kilraine v London Borough of Wandsworth 2016 IRLR 422*
13. We received written submissions from both Counsel which we considered in coming to our conclusions.

Credibility

14. Since there is significant dispute as to the interaction between the claimant and Mrs Burunou it is appropriate to deal with the issue of credibility. We found the claimant to be an honest witness in relation to her beliefs in the process to be followed for booking referrals and how any failure to follow what she believed to be the agreed process, might impact on health and safety to clients and staff. However, we did not find her evidence credible in relation to matters which she contends that she raised with her employer or with employees of the respondent because her oral evidence was

contradicted by contemporaneous documentary evidence. For example notes completed by the claimant's colleague Ms Painter after a workshop on 26th July 2013 did not support the claimant's contention as to what was agreed. Further, we did not accept her evidence that she resigned her employment with Tascor in November 2013 because of conduct from Mrs Burunou. The contemporaneous documentary evidence, including the claimant's resignation letter and the evidence of her witness Dr Young, indicated that the claimant resigned because her employer was not able to comply with the claimant's flexible working request for reduced hours. There was nothing whatsoever in any of the contemporaneous records to suggest that Mrs Burunou's behaviour in any way affected that decision. We conclude that the claimant was untruthful on that part of her evidence.

15. Further, the claimant's contentions that she was subjected to bullying by Mrs Burunou for much of her employment including escalation of that behaviour from July 2013 onwards and in particular in autumn of 2013 was not credible. The claimant's contentions were contradicted by her own behaviour during that period.
16. As a matter of fact she engaged in social interaction with Mrs Burunou during this period, confiding in her and seeking her help and support. She approached Mrs Burunou for a loan. Her request to borrow money was granted. The claimant and Mrs Burunou sent each other birthday wishes and gifts. Mrs Burunou accompanied the claimant to group meetings at Alcoholics Anonymous to offer her support. We find that this interaction contradicts the claimant's contention that she was subjected to bullying by Mrs Burunou during this period.
17. We did not accept Counsel's contentions on behalf of the claimant that the interaction indicated bullying in a complicated form and that Mrs Burunou was controlling the claimant. We find that both women had strong and assertive personalities. We find that the two women enjoyed a friendship which was at times close, but was at other times, when conflict arose less close. They also had a working relationship which at times could be difficult but we do not accept that many of the incidents which the claimant relates occurred as she contends.
18. We found Mrs Burunou to be confident and assertive. We found her to be clear and consistent in her evidence. Generally we found her to be a convincing witness. However, we were not satisfied that once the claimant's removal from the Tascor contract had been mooted by Ms Tromans of the Avon and Somerset Constabulary that Mrs Burunou was a neutral participant in the process.
19. We find that having been upset by the claimant's behaviour on 17th December 2013 she (on her own admission) would have found it difficult to work with the claimant thereafter. It is likely that she asserted her view that the claimant was not a fit and proper person to work under the contract.
20. We were satisfied that she was truthful when she stated that matters raised by the claimant about Tascor had not been passed on to her and also that she was unaware, until sometime in February 2014, that the claimant had raised a complaint about her and was unaware of the nature of the complaint about her. We were also satisfied that she was being truthful

when she contended that matters raised with the claimant's employer by email on 7 October 2013 were raised out of genuine concern for the claimant's wellbeing. At this point in time the claimant was seeking support from Mrs Burunou and revealing to her matters regarding her own health and personal difficulties Mrs Burunou considered it appropriate to pass onto Tascor her concerns about the claimant's well being for Tascor to take action.

21. We found Emma Painter to be a convincing and credible witness.
22. Ms Sarah Crew we found persuasive, honest and credible. We are satisfied that she was in no way influenced or manipulated by Mrs Burunou in reaching her decision that the claimant be removed from the contract.
23. We accepted her evidence that the decision that she reached was hers alone, weighing up two issues which she considered important in determining whether the claimant was a fit and proper person. Those two issues which informed her decision were based on the representations from the claimant's employer that the claimant had acted in an unacceptable and unreasonable manner on the 17th December 2013 and that the claimant had been in contact, using her private mobile phone, with a vulnerable client. The contact incident, of which she had only become aware, weighed heavily in her decision making process.
24. We found Ms N Brooks to be an honest and credible witness.
25. We found Dr Young a straightforward candid and credible witness. She accepted Tascor's shortcomings in handling the difficulties that arose between the claimant and Mrs Burunou. She frankly accepted that Human Resources input was available and was not utilised.
26. We found Dr Grant to be a truthful witness. However, his view of the ethos of The Bridge was entirely at odds with all other witnesses who gave evidence. Despite stating that he had no axe to grind with either the respondent or Mrs Burunou, his response in cross examination we found to be hostile towards the respondent and Mrs Bunurou.
27. We therefore find the following facts proved on the balance of probabilities.
28. The claimant commenced employment with Tascor on 12 September 2011 as a Forensic Nurse. The claimant was based at the respondent's premises at the Central Health Clinic in Bristol known as The Bridge. The Bridge was run as a partnership between Avon and Somerset Police and NHS England. The respondent hosts The Bridge and employs some staff directly, including Mrs Burunou, about whom the claimant complains.
29. The claimant's employer Tascor had a contract with Avon and Somerset Police to provide forensic services at The Bridge. This included the provision of doctors and forensic nurses for the purposes of medical examinations, where appropriate, of victims of sexual abuse or sexual violence.
30. In order that Tascor's employees could access the respondent's facilities and could work at the respondent's premises an honorary contract was

issued to relevant individuals. The claimant had such an honorary contract. The claimant was paid by her employer Tascor. The respondent had no management control over the claimant.

31. Mrs Burunou was the Centre Manager at The Bridge. The services provided at The Bridge include counselling to victims where appropriate and medical examination where appropriate. The Bridge was open to anybody who had been the victim of sexual abuse/assault who just wanted to come into the centre to talk about their particular experience. This could be by self referral or by referral from the police. Present at the Bridge was a team of crisis workers all appropriately trained, and nurses and doctors providing forensic examinations when required.
32. Mrs Burunou was a trained crisis worker. Her job description included the requirement to act as a crisis worker when necessary, although in practice this was not on a regular basis, because there were specifically retained crisis workers.
33. The respondent had a process which was to be followed when a referral was made to The Bridge by a police officer. An individual client might be booked in for a counselling session, where appropriate. If it looked likely that a medical examination might take place that examination was booked in discussion with a forensic examiner.
34. When The Bridge was originally set up there were no nurses based on site, so the arrangement for a medical examination would be made through the Tascor call centre. However, when nurses became based on site (in late 2011) the process adopted, would generally be that when a police referral was made, the discussion in relation to forensic medical examination would take place between nurse and the police officer. The nurse would ask appropriate questions relating to the client's background and any necessary medical considerations. The nurse would be able to carry out a risk assessment. A decision as to whether a medical examination was appropriate and necessary was that of the nurse or doctor concerned.
35. The respondent in consultation with a predecessor of Tascor (Reliant Medical Services) and other relevant bodies formulated a Forensic Medical Policy dated April 2013. The author of that document was Dr Cybulska, Clinical Director at The Bridge. The document appears in the collection of documents before the Tribunal as a draft document. It is likely that this was the policy document in force.
36. At 6.2 of that document the police referral for a forensic medical examination process is set out. That document provides that requests for a forensic medical examination will be booked by the police via the forensic healthcare providers call centre which will issue a log number and contact a forensic doctor or forensic nurse to request a forensic medical examination. The document provides that a forensic practitioner/forensic nurse ought to speak to the police officer to agree a time of the forensic medical examination and to get background information about the case. The document provides that following this, the police ought to contact the SARC duty crisis worker to request attendance at the SARC. There is nothing in the policy document that indicates it is legally binding document.

37. In practice nurses were based at The Bridge during working hours loosely from 8.00am to 6.00pm. When a police officer made a referral she/he would telephone and where a nurse was immediately available the nurse would take the call, discuss the case with the police officer and then book a medical examination, if appropriate.
38. The claimant contends on all occasions when a call comes in from police for a medical examination this must be dealt with by a nurse. That contention is not supported by the practicalities of the situation. We preferred the evidence of the respondent that when a nurse was available it was appropriate for the nurse to take the call and thereafter make the necessary arrangements for an examination. However, if a nurse was not available, e.g if she was engaged carrying out another examination, or was in the lavatory, then the crisis worker could in those circumstances book the client in for a medical examination. When the nurse or doctor became available, he or she would telephone the police officer to confirm the position and ask all relevant questions and confirm the booking of the examination. Medical examinations presented only a proportion of the work undertaken at The Bridge. Crisis workers were trained to ask relevant information of the police and on how to handle the calls.
39. The respondent contends and it is supported by the evidence of Ms Crew, that if a call came in from the police, and the forensic nurse was not available, the crisis worker would take the call and make the necessary arrangements because the ethos of the Bridge is that nobody would be turned away.
40. The aim of The Bridge was to provide its facilities in a calm and stable environment where the clients could feel as comfortable as possible in the circumstances.

The alleged disclosures

41. The first set of disclosures (disclosures 1A – C) are alleged to have been made to Dr Janet Young of Tascor during the period April to August 2013. The claimant contends that on every occasion that she met Dr Young for supervision meetings, she raised that the health and safety of staff and clients health was put at risk and that there was an accident waiting to happen, if Mrs Burunou was allowed to continue booking forensic examinations acting as a crisis worker. She also contends that she raised with Dr Young that Mrs Burunou that crisis workers were taking calls from the police and booking forensic cases for examination without carrying out a full risk assessment. She contends that she raised that Mrs Burunou was acting outside her own job description (by acting as a crisis worker) and that her bullying behaviour was causing her and other staff members great anxiety and stress.
42. We heard no specific evidence from Dr Young as to what the claimant said to her on a regular basis regarding health and safety and her working relationship with Mrs Burunou. However, it was clear to Dr Young that relationships at The Bridge were strained and that there was unhappiness amongst the staff and that the atmosphere was tense. Dr Young understood that there was a clash in their respective views on how cases should be managed. It is likely that the claimant raised her concerns

regarding lack of clarity in processes and her views of her relationship with Mrs Burunou.

43. However we are not satisfied that the claimant specifically disclosed information that health and safety had been endangered or was likely to be endangered because if she had done so, Dr Young is likely to have recorded this and likely to have noted it at a meeting which subsequently took place on 3 July between her, Mrs Brooks of the respondent and the claimant. There is no such reference in the notes of that meeting. Further at no time during the relevant period did the claimant complete an incident report relating to these matters. If the claimant had considered that a health and safety issue had occurred she would have completed an incident report, as her professional registration rules required. She did not do so.
44. In any event, whatever the claimant raised with Dr Young in supervision meetings, we are satisfied those matters were not passed on to the respondent or to Mrs Burunou. There is no evidence to indicate that they were and the claimant's contention that it is likely that anything she said to Dr Young would have been passed onto the respondent is not supported by any evidence. We come to this conclusion because we have found that Tascor's own processes in managing its employees were lax. It did not in respect of the claimant's circumstances seek any HR advice and when matters such as the claimant's late attendance were notified to it (as it requested) these were not progressed in any way by Tascor. In summary, nothing that the claimant disclosed to Dr Young in supervision meeting or other contact was made known to Mrs Burunou or the respondent.
45. The second series of protected disclosures are alleged to have taken place between April and December 2013 to Ms Painter when the claimant contends that she disclosed all the matters referred to above disclosure 1. We find as follows:
46. Emma Painter is a colleague employed by Tascor. She is a Forensic Nurse and the claimant in email correspondence raised an issue for Ms Painter to discuss at a meeting which affected them both. The issue was a lack of clinical support for nurses after the Clinical Director had been suspended.
47. After that email exchange the claimant and Ms Painter had a discussion regarding what they believed to be a situation of "a muddle" at The Bridge. Following that discussion Ms Painter formulated an email setting out the four main points raised by the claimant. We find that this email sets out the most significant matters discussed between them. There is no evidence that the matters that were discussed in that chain of correspondence were passed on to the respondent or Mrs Burunou by Ms Painter except in relation to a meeting on 12 July 2013 between Ms Painter and the respondent which dealt with matters involving Ms Painter and not the claimant.
48. The email passing between the claimant and Ms Painter revolved around the clinical structure at The Bridge, lack of policies, lack of clinical support and the claimant's relationship with Mrs Burunou. The email correspondence does not indicate that the claimant raised potential for health and safety breaches in her discussions with Ms Painter. If she did, this was not passed on to Mrs Burunou or the respondent.

49. Disclosure 3. The claimant contends that between April to December 2013 on a regular basis she raised issues of protocols not being followed. We find as follows:
50. Whilst the claimant did not specifically allege that protocols had been breached in relation to the booking in of appointments for medical examinations, we conclude that it is likely that from time to time, but not weekly the claimant raised with Mrs Burunou that the documented procedure was not being followed. We come to this conclusion because the claimant raised with Dr Young a lack of clarity of the process which subsequently resulted in a workshop taking place on 26 July 2013 at which Mrs Burunou and other crisis workers were present. Whilst the claimant was at The Bridge she had contact with Mrs Burunou on a regular basis as Mrs Burunou was managing the processes. We therefore find that Mrs Burunou was aware of the claimant's concerns and that the claimant's view as to how the process should operate was different from hers. We find that the claimant is likely to have explained that this could be a risk issue. However we are not satisfied that during these conversations the claimant disclosed information which tended to show that health and safety was endangered or that any legal obligation had been breached.
51. The fourth disclosure is alleged to have been made to Ms Brooks in April 2013. The claimant contends that she phoned Ms Brooks to say that she needed to see her, that a meeting took place and that she told Ms Brooks that she did not feel safe at work because Mrs Burunou was pushing the claimant to take referrals and carry out examinations without referrals having been risk assessed and that protocols were not being followed. She also contends that she told Ms Brooks that she was scared of Mrs Burunou.
52. We find that it is likely that some discussion took place between the claimant and Ms Brooks. However, we are not satisfied that it occurred in the way that the claimant describes. Firstly her original contention was that this incident took place in June 2013 and this was amended at the start of the hearing to read April 2013. Secondly there is no contemporaneous record of any meeting. The email recording what the claimant told Emma Painter makes no reference to the claimant being upset when speaking to Ms Brooks, however we find that it is likely that the claimant mentioned her relationship with Mrs Burunou.
53. We conclude that if it was a significant meeting during which the claimant became upset this would have been something that Ms Brooks would have recalled. She had no recollection of the meeting. Whatever she said to Mrs Brooks at that point in time we conclude it was not passed on to Mrs Burunou. If it had been it is likely that Ms Brooks would have recalled it, as would Mrs Burunou.
54. Disclosure 5 is alleged to have taken place in May 2013 when the claimant contends that she approached Mrs Burunou and told her that she was frightened of her and what she might do to her. She also contends that she informed Emma Painter and Janet Young of the conversation.
55. We find that sometime in May 2013 the claimant on one occasion spoke to Mrs Burunou and told her that she was frightened of her. We preferred Mrs

Burunou's version of events. During this period the claimant had a friendly relationship with Mrs Burunou. She had asked Mrs Burunou to accompany her in selecting her wedding dress. She discussed her concerns of her personal relationships and sought advice from Mrs Burunou.

56. We find that the claimant raised three issues. Firstly that she had questioned by Mrs Burunou regarding her internet usage. Secondly that Mrs Burunou raised with her frequent trips away from The Bridge into town and thirdly, the usage of her mobile phone for personal matters. We find that those matters were discussed.
57. Mrs Burunou explained that the internet usage had been raised by her because the respondent's IT Department had queried the amount of the claimant's internet usage, revealed to be excessive using the IT Department's routine monitoring system. She explained to the claimant that she had queried when she was leaving The Bridge to go into town in order to ascertain availability for the purposes of examinations. Mrs Burunou accepted that she had snapped at the claimant in response to the bleeping of the claimant's mobile phone. Mrs Burunou explained that she was irritated with the constant bleeping of the telephone and accepted that her response to it had been inappropriate and apologised.
58. We find that when Mrs Burunou explained the situation to the claimant the claimant was satisfied with the explanation. She indicated that she was glad that the matters had been discussed and that she did not feel frightened of Mrs Burunou all the time. We find that nothing said by the claimant during this discussion amounted to a disclosure of information tending to show that health and safety was endangered or a legal obligation was breached.
59. Disclosure 6. The claimant contends that in June 2013 at IKEA she made a disclosure to Sarah Lindsey (of Tascor) that Mrs Burunou was making it very difficult to keep to the protocol and was putting pressure on the claimant to book cases and see people before a full risk assessment had been carried out. This alleged disclosure is not documented. We heard no evidence from Sarah Lindsey. There is no evidence of anything that the claimant said to Sarah Lindsey in June 2013 being passed on to the respondent or to Mrs Burunou.
60. Disclosure 7 is alleged to have been made to Lissy Jeffries (Tascor) between May and June 2013. Disclosures are alleged to have been those set out in protected disclosures 1A – C. There is no record of what information passed from the claimant to Lissy Jeffries. We heard no evidence from Lissy Jeffries as to what was disclosed to her, or if health and safety issues were raised with her. Whatever discussion took place between the claimant and Lissy Jeffries during this period, there is no evidence whatsoever that these matters were communicated to Mrs Burunou or anyone else within the respondent.
61. Disclosure 8. This is alleged to have been made to Dr Janet Young and Ms Brooks on 3 July 2013 at a meeting. The disclosures are alleged to be those previously referred to as 1A – C, the lack of clinical support for nurses and Mrs Burunou's inappropriate comments about Dr Cybulska, thereby breaching Dr Cybulska's confidentiality. We find as follows:

62. On 3 July 2013 the claimant attended a meeting with Dr Young (Tascor) and Ms Brooks. The background to that meeting is that the claimant, without the knowledge of Dr Young, had approached Ms Crew (then Chief Superintendent) of Avon and Somerset Constabulary to discuss issues at The Bridge. This approach to Ms Crew, without informing Dr Young, hurt and upset Dr Young. Dr Young was angry with the claimant. Although the reason for the claimant's approach to Ms Crew was discussed at the meeting, other matters such as staff relationships at The Bridge were also discussed.
63. It was apparent to Dr Young that the relationships amongst staff at the Bridge were strained. This did not relate solely to the claimant. It was apparent that staff disagreed about processes and how they should be followed. The meeting was called to discuss the claimant's approach to Sarah Crew and also difficult working relationships at The Bridge.
64. Notes were made at that meeting. We find that the notes are a reasonably accurate record of what transpired. Issues raised by the claimant included feeling unsupported. She gave an example of not being able to contact a doctor when she was required to examine a man. The referral pathway or protocol was discussed; it was made clear to the claimant that if she had any clinical issues she should raise them with Dr Young. The claimant was questioned by Dr Young regarding her approach to Ms Crew and what she discussed and the claimant raised questions regarding guidelines. Whilst we find that the pathway for booking appointments was raised, there was no disclosure of information by the claimant which amounted to a disclosure that tended to show that health and safety risks had occurred or were likely to occur.
65. The notes of the meeting indicate that no information was disclosed by the claimant regarding Mrs Burunou breaching Dr Cybulska's confidentiality. We come to that conclusion because the contemporaneous hand written notes and the typed written notes make no mention of Mrs Burunou or any breaches of health and safety. Further the oral evidence of other witnesses Dr Young and Ms Brooks does not support the claimant's contention that these matters were raised. Towards the end of the meeting the claimant raised her relationship with Mrs Burunou. She explained that she was made to feel uncomfortable on occasions and gave the example of Mrs Burunou snapping at her over the mobile phone incident. She gave other examples. Dr Young commented that in her opinion Mrs Burunou could be a bully. Mrs Brooks advised both of them if either had a problem with Mr Burunou they should see Mrs Brooks privately to discuss the issues and she would progress their concerns. Neither approached Mrs Brooks thereafter.
66. Following the meeting on 3rd July Mrs Brooks spoke to Mrs Burunou about what the claimant had said about feeling uncomfortable (the phone incident). Mr Burunou explained that the claimant had already approached her about 3 areas of concern for which she had given an explanation and apology where appropriate (the phone incident).
67. Disclosure 9. This is contended to have occurred at a workshop on 26 July 2013 and to have been made to Dr Young, Mrs Brooks, Ms Shannon, Emma Painter and Mrs Burunou. The disclosures are contended to be the matters set out at disclosures 1A – C.

68. This workshop was set up in order to clarify the pathway for making referrals for medical examinations. Although the meeting was a tense one, all those present acted professionally in trying to resolve a process to give clarity as to how the referral pathway should work.
69. The attendees put forward their ideas on how the process should work. A flipchart was set up. Ms Brooks wrote down the step by step processes for both for when clients were referred by the police and for self referrals. Ms Painter typed the notes at the conclusion to the workshop. The way forward was therefore discussed and agreed. The notes reflect the position that was being operated and that which should be operated going forward.
70. The relevant point noted at page 2 of the document, point 2 stated "Tascor to pass call to SOE and/or CW (SOE the nurse and CW the crisis worker)". The document was circulated thereafter and the claimant and others raised queries regarding whether the notes represented the agreed conclusion.
71. However, there is no evidence that the claimant at that meeting made the disclosures that she alleges in relation to staff and clients' health and safety being at risk or in relation to Mrs Burunou's conduct as defined in disclosure 1 A to C. We find that it was a meeting to discuss appropriate process to be followed. There was no disclosure of information by the claimant.
72. Disclosure 10 is contended to be made to Dr Young on 28 July 2013 by telephone informing her that the protocol had been breached.
73. It is clear there remained a difference of opinion as to the process to be followed and the claimant may well have contacted Dr Young to advise her that in her view the process that had been discussed and agreed on the 26 July, had not been followed. What exactly she said or whether she referred to this amounting to breach of health and safety is unclear. There is no evidence whatsoever that Dr Young passed on to the respondent any information that the claimant relayed to her on 28th July 2013.
74. Disclosure 11. The claimant contends that from 28 July 2013 to August 2013 she made regular disclosures about breaches of the protocol and the behaviour of Mrs Burunou. We find it is likely that the claimant contacted Dr Young on occasions when she considered that the protocol had not been followed and it is likely that if she had complaints about Mrs Burunou's behaviour she also raised those. However, there is no evidence that those matters were passed on to the respondent or Mrs Burunou.
75. We find that Tascor took little initiative in dealing with the relationship issues. The correspondence between Dr Young and Ms Brooks of the respondent does not indicate that Dr Young raised with Ms Brooks or anyone else of the respondent any disclosures of information that the claimant gave. Similarly there is no evidence that correspondence between the claimant and Ms Painter of 14 August where the claimant raised her concerns regarding an incident on 14 August was passed on to the respondent.
76. Disclosure 12 is contended to be made to Emma Painter, Sarah Lindsey and Mrs Burunou on 14 August by email and verbally to Mrs Burunou. We

refer to our finding above. The claimant's email of that date was addressed to Ms Painter and to Ms Lindsey. There is no indication that that was passed on to the respondent or Mrs Burunou.

77. We find that she did raise an issue verbally with Mrs Burunou. We reject the claimant's contention that she raised this as amounting to a health and safety issue with Mrs Burunou at the time. We preferred Mrs Burunou's evidence that the claimant's complaint regarding this incident where a client was booked in by a crisis worker (Nikki Shannon) was because she did not wish to return to The Bridge after hours to conduct an examination as she had left at 5.00pm. The issue she raised with Mrs Burunou verbally was the inconvenience of having to come back to The Bridge to carry out the examination. We accept Mrs Burunou's evidence that the claimant's email to Emma Painter and Sarah Lindsey was not shared with Mrs Burunou.
78. Disclosure 13 is alleged to have been made on 17 December 2013 that the protocol had not been followed and that she had not received notification of two appointments that had been booked or any appraisal for the risk assessment.
79. The background to the incident of 17 December is as follows:
80. At 9.11am Mrs Burunou emailed Sarah Lindsey of Tascor to advise her that the claimant had not yet turned up for work and that she had not heard from the claimant, that a woman had been booked in 9.30am to discuss her options and that an examination might be required.
81. It turned out that the claimant was at a supervision meeting that morning, but this had not been logged in the claimant's electronic diary. Therefore as far as Mrs Burunou was concerned the claimant was late for work. An arrangement had been reached with Tascor that if the claimant was not at work on time then Mrs Burunou would contact Tascor to deal with any management issues following on from that.
82. At 9.30am that morning the police telephoned the Bridge to book a forensic examination. Mrs Burunou took the call and booked the client in for 11.30. She telephoned Ms Lindsey to advise that the claimant had still not arrived and asked Ms Lindsey to try and locate the claimant to ensure that the examination could be covered. Ms Lindsey then called Mrs Burunou to advise that the claimant was in fact in a supervision meeting and that she believed that she had put that in her diary. In fact she had failed to do so.
83. The claimant then arrived at 10.20am and when Mrs Burunou confronted her and reminded her of the importance of putting things in her diary so that staff at The Bridge knew when she was coming in, this resulted in an altercation between the two of them. During this interaction the claimant raised her voice at Mrs Burunou and left the premises, exhibiting behaviour which the claimant accepts was unacceptable.
84. Further details of what occurred on 17 December will be set out in our findings of fact in relation to the alleged detriments.
85. After leaving The Bridge the claimant contacted Ms Lindsey by telephone. She then returned to The Bridge. It is unclear from her witness statement

what she actually said to Ms Lindsey over the telephone, however, we conclude it is likely to have explained her reasons for leaving rather than raising a breach of protocol. In any event there is no evidence that Ms Lindsey relayed onto Mrs Burunou or anyone of the respondent what the claimant told her in this telephone conversation. Therefore Mrs Burunou was not aware of what the claimant told Ms Lindsey over the phone that morning.

86. Disclosure 14 is contended to have occurred between 17th to 20th December in providing her account of events of 17 December, outlining the disclosure in disclosure 1 and further breaches of procedure. The only documented contact with Sarah Lindsey was an email sent by the claimant addressed to Ms Lindsey and Dr Alan Grant dated 20 December where the claimant set out her version of events of 17 December.
87. In that email she raised that a medical examination had been booked in for 11.30 on that date without discussion. The claimant then set out her version of events. Later on in the email she raised that the medical examination later that morning had been booked without a call being made to Tascor and without a conversation taking place with the police officer. She described characteristics of the client to be examined and the fact that the individual was aggressive and had attended with a pregnant police officer, who was also unaware of those facts.
88. She mentioned that the client became increasingly aggressive towards the crisis worker. She raised that she was not happy about others making assessments for clients, who she was to examine, not happy that Tascor was not called and not happy that the process that was agreed months ago was yet again not followed. She stated "This is how mistakes happen and it nearly did happen on Tuesday 17 December". That email was subsequently copied by Ms Lindsey to Ms Tromans of the Avon and Somerset Constabulary. However, there is no evidence that this email was passed on to Mrs Burunou or the respondent at the time it was sent. The first time the claimant's version was seen by the respondent and Mrs Burunou was in February 2014 in connection with an investigation carried out by Tascor into the events of 17th December and the claimant's behaviour. Subsequent correspondence relating to that email was solely between Ms Lindsey and Ms Tromans with Ms Crew of Avon and Somerset Constabulary being copied into the correspondence.
89. Disclosure 15 is contended to be a grievance letter dated 20 December 2013. This has been clarified in the submissions as amounting to the same document referred to as disclosure 14. We refer to our findings of fact on disclosure 14 and its content and to whom it was known.
90. Disclosure 16. This is clarified as being a grievance letter to NHS England dated 21 December 2013. In written submissions it is accepted that this cannot be a protected disclosure without relying on Section 43G of the ERA and it has been clarified that the claimant is not relying on Section 43G. That document to NHS England does raise issues in relation to risk assessment, breaches of procedure resulting in risks to health and safety etc but this document was not forwarded to the respondent neither the respondent nor Mrs Burunou ever saw that correspondence until these proceedings.

91. Disclosure 17 relates to the same documentation as disclosure 16 our findings of fact are repeated.
92. Disclosure 18 is a grievance letter forwarded to the respondent's Employee Services Department on 23 December 2013. That document set out two main grievances firstly that she had been bullied periodically by Mrs Burunou over two years, which she stated had left her feeling increasingly intimidated, undermined, under valued, hyper vigilant and anxious and secondly that she had grave concerns about health and safety of clients and staff in relation to carrying out risk assessments and initial consultations with potential clients, who may require forensic medical examinations. The claimant stated in that grievance that the assessments should be carried out by Clinical staff only and that was agreed in writing many months previously and documented.
93. Although this document was sent to the respondent's Employee Services Department, we accept Mrs Burunou's evidence that she was never shown copies of this grievance until after the claimant issued her Tribunal claim, However, she is likely to have known that a complaint in general terms had been made by the claimant about her. We conclude that this is likely to have occurred because the contemporaneous correspondence indicates that Mr Lewis of HR advised Mrs Burunou on or about 12 February that a complaint had been made by the claimant about Mrs Burunou, although the full content had not been made known to her.
94. Disclosure 19 is alleged to be a repeat and reattachment of the grievance letter of 23 December 2013. We repeat our findings of fact in relation to disclosure 18.
95. Disclosure 20 is contended to be a grievance letter dated 2 January 2014 asserting that Ms Bununou had breached the claimant's confidentiality by disclosing personal information which had been given to her in confidence to others including Ms Crew, the NHS Commissioner and Dr Alan Grant of Tascor. We refer to our findings of fact in relation to disclosures 19 and 20 namely that Mrs Burunou was not made aware that the claimant had raised a grievance/complaint about her until on or about 12 February 2014 and was not aware of the detail of the complaint.
96. Disclosure 21 is an email sent on 6 January 2014 to Employee Services at the respondent providing additional information and background to the grievances already raised and raised additional information including health and safety in relation to risk assessments, further information about bullying, breaching her confidentiality and other members of staff namely Dr Cybulska. On the same date the claimant copied to Ms Lindsey the grievances that she had already raised.
97. Our findings of fact on these documents are that Mrs Burunou was not aware that the claimant raised complaints against her until 12 February 2014 and was not aware of the content of those complaints.
98. The final disclosure is contended to be an email on 24 February. That email questioned whether the claimant's concerns had been determined as she had understood that they had not been upheld. She queried the

respondent's process and raised an issue regarding filing cabinets containing confidential information not being locked. There were no further allegations apart from that issue raised in that email. We accept Mrs Burunou's evidence that she was unaware that the claimant had raised these issues with Ms McNeill.

99. Having made findings of fact as to what was said/written in respect of the alleged disclosures, we consider it is now appropriate to analyse whether each alleged disclosure amounts to a qualifying disclosure and thereafter whether each is a protected disclosure. Since the claimant's complaint is that the conduct that was meted out to her emanated from Mrs Burunou, it is necessary to consider whether she knew of the claimant's disclosures.
100. In accordance with Section 43B and the settled case law in *Cavendish Munro Professional Risks Management Ltd v Geduld* we are mindful that there is a distinction between information and an allegation. We note the guidance in *Kilraine v London Borough of Wandsworth* we must ask ourselves whether any alleged disclosure amounted to a disclosure of information. We bear in mind following the guidance in *Fincham v MM Prison Service UKEAT/0991/01* the disclosure of information, although it does not have to be in strict legal language, must identify the category of disclosure as defined in Section 43B.
101. The claimant alleges that she made disclosures that tended to show that breach of a legal obligation had occurred or was likely to occur and/or that health and safety of staff and clients had been endangered or was likely to be endangered. Mr England clarified in submissions that the claimant was not alleging a breach of a legal obligation as to the claimant's own contract of employment. We must therefore determine whether on the facts we have found the claimant made disclosures of information identifying breaches of any legal obligation or health and safety breaches.
102. Dealing firstly with disclosures 1 A – C we refer to our findings of fact on this matter. We have found that Dr Young was aware of relationship difficulties between the claimant and Mrs Burunou and a clash in their respective views on how cases should be managed. We found that the claimant raised with Dr Young lack of clarity in processes and that she had difficulties with Mrs Burunou. We were not satisfied that the claimant had raised specific breaches with Dr Young and we have explained in our findings of fact why we came to that conclusion.
103. We are not satisfied that the claimant actually disclosed information which tended to show that either breach of any legal obligation had occurred or that health and safety had been endangered or was likely to be endangered. We consider that expression regarding different views on the respondent's protocol process and the fact that it had not been followed did not amount to breach of a legal obligation. The policy itself was guidance and not contractual document.
104. As to knowledge we refer to our findings of fact that matters raised by the claimant with Dr Young during this period were not passed on to the respondent or to Mrs Burunou. Therefore Mrs Burunou had no knowledge of these conversations. Any actions by her towards the claimant could not

have been motivated by the discussions between the claimant and Dr Young.

105. Disclosure 2. We have found that the discussion with Ms Painter covered the lack of clinical support provided by Tascor to the nurses and a discussion regarding what was perceived to be a muddle in the processes followed at The Bridge. An additional matter was that the claimant felt bullied by Mrs Burunou. We have asked ourselves whether during the discussion which prompted the email, the claimant made a disclosure of information to Ms Painter which tended to show either breach of a legal obligation or that health and safety was endangered. We conclude that the discussion did not amount to the disclosure of information. Had it done so then matters would have been fully set out in the contemporaneous email which Ms Painter formulated. If we are wrong and the discussion amounted to disclosure of information and it was a protected disclosure then we have found that details of that discussion were not passed on to the respondent or Mrs Burunou.
106. Disclosure 3. We refer to our findings of fact. We have concluded that there were discussions from time to time between the claimant and Mrs Burunou regarding the booking in procedure for forensic medical appointments. We found that Mrs Burunou was aware that the claimant took a different view of the process. We have found that she did not indicate that as a result she believed that health and safety was at risk. In the context of two professionals discussing a process, we are not satisfied that the claimant's discussions with Mrs Burunou amounted to a disclosure of information that health and safety was at risk or that a legal obligation was being breached.
107. Disclosure 4. We refer to our findings of fact. We found that the claimant did raise an issue with Mrs Brooks regarding her relationship with Mrs Burunou and difficulties that she was experiencing. However, nothing was raised with Ms Brooks regarding referrals being taken without proper risk assessments or the pathway for booking appointments. This was not a disclosure of information which tended to show that breach of a legal obligation had occurred and was likely to occur or that health and safety had been endangered or was likely to be endangered.
108. In any event if we are wrong and the discussion with Ms Brooks amounted to the disclosure of information and it was a qualifying and protected disclosure we are satisfied that Mrs Burunou was not aware of the discussion at that time.
109. Disclosure 5. We have found that the claimant approached Mrs Burunou in May 2013 and advised her that she was frightened of her in respect of three issues. We refer to our findings of fact. We find that this was a conversation about relationship difficulties the matters which the claimant raised unrelated to the pathway/protocol namely challenging the claimant's internet use, her breaks away from the Bridge and Mrs Burunou's interaction with her when the claimant's mobile telephone had beeped excessively. This conversation did not amount to a disclosure of information that Mrs Burunou had breached the legal obligation or that the claimant's health and safety was endangered.

110. We will deal with disclosures 6 and 7 together since they are both alleged to have been made to Tascor employees Sarah Lindsey and Lissy Jeffries. We refer to our findings of fact.
111. We have been unable to establish exactly what the claimant said to Sarah Lindsey in June 2013 or to Lissy Jeffries at around the same time. There was no contemporaneous record and the claimant's credibility is in issue. We concluded that she may well have raised concerns regarding what she saw to be breaches of protocol. We are not satisfied that she disclosed information that tended to show breach of a legal obligation or health and safety breaches. We have also found that whatever she raised to Sarah Lindsey and Lissy Jeffries was not communicated to Mrs Burunou or the respondent, therefore no action of Mrs Burunou could have been motivated by any matters raised by the claimant during this period with Sarah Lindsey and Lissy Jeffries.
112. Disclosure 8. We refer to our findings of fact. We found that the principal issue that was discussed was a lack of clinical support raised by the claimant and the difficulties that she had in contacting Dr Young. The claimant's concern was regarding individual's roles and not that protocols had been breached. We refer to our findings that Mrs Burunou breaching of Dr Cybulska's confidentiality was not raised and although the claimant at the end of the meeting raised concerns regarding her relationship with Mrs Burunou, those were the matters which the claimant had raised directly with Mrs Burunou in May 2013. The disclosure of those matters to Dr Young and Ms Brooks did not amount to a disclosure of information that either the claimant's own health and safety or that of others had been endangered, nor that breach of a legal obligation that occurred or was likely to occur.
113. Disclosure 9. We refer to our findings of fact. We found that the meeting was a workshop to give clarity to the roles of the different people involved and the referral path and how the referral pathway should work. We have found that during that meeting the claimant engaged in the discussion as did others but she was not making any disclosure of information.
114. Disclosures 10 and 11. We refer to our findings of fact. We found that the claimant may well have contacted Dr Janet Young during the period referred to, to advise her that the protocol which the claimant understood to be in place was not followed. It is also likely that she raised she was surrounding her relationship with Mrs Burunou. However, there is insufficient evidence before us to determine what was actually said to Dr Young and whether that amounted to a disclosure of information indicating that either health and safety was endangered or breach of a legal obligation had occurred or was likely to occur. However we have found that any discussions between the claimant and Dr Young were not passed on to the respondent. Mrs Burunou was unaware of what the claimant raised with Dr Young during this period and therefore could not have been motivated by those discussions.
115. Disclosure 12. We refer to our findings of fact. We have found that the claimant in her email disclosed that in her view the correct process for referral was not being followed. She made no reference to health and safety being endangered. She raised that she was feeling frustrated and

stressed. In our view that is not sufficient to amount to disclosure of breach of health and safety or breach of a legal obligation.

116. The issue was not raised with Mrs Burunou directly and the email to Tascor was not passed on to the respondent or Mrs Burunou, therefore Mrs Burunou had no knowledge of the claimant's email complaint. If we are wrong and the email complaint did amount to a disclosure of information tending to show breach of health and safety or breach of a legal obligation then Mrs Burunou could not have been motivated by it because she was unaware of it.
117. Disclosure 13. We refer to our findings of fact. We found that the claimant telephoned Sarah Lindsey after the incident on 17 December. There was insufficient evidence to determine whether any disclosure of information tending to show that breach of health and safety or a legal obligation had occurred. We concluded that it is likely that she explained to Sarah Lindsey she had left the premises and why she had done so. If she did disclose to Sarah Lindsey information which tended to show that health and safety had been endangered or breach of a legal obligation had occurred, or was likely to occur, then there is no evidence that that was passed on to the respondent or Mrs Burunou. Therefore, no actions from Mrs Burunou would have been influenced by any information that the claimant passed on to Sarah Lindsey in her phone call on 17 December.
118. Disclosure 14. We refer to our findings of fact. This correspondence was sent to Tascor and forwarded on to the police and to Ms Tromans and to Sarah Crew. The email from the claimant disclosed information regarding her interaction with Burunou on 17 December explained the claimant's version of events. The email also made reference to what had occurred during a forensic examination. It was a disclosure of information regarding an aggressive client, the fact that she had attended with a pregnant police officer who was unaware of the client's medical background explained that an aggression had occurred toward the crisis worker. The claimant disclosed that she was not happy that the agreed process was not followed and made reference to mistakes occurring. We consider that the email to Tascor amounted to a disclosure of information that processes had not been followed on 17 December which were likely to result in a risk to health and safety. We are satisfied that the claimant reasonably believed in the information disclosed it was therefore a protected disclosure. However, as to knowledge, we have found that that email was not passed on to the respondent or Mrs Burunou at the time. The respondent and Mrs Burunou did not become aware of the content of it until much later on in February 2014 in the context of Tascor's investigation.
119. Disclosure 15. We refer to our findings of fact on disclosure 14. This email was to Tascor. It disclosed information which amounted to a protected disclosure but was not passed on to the respondent or Mrs Burunou and therefore no conduct by Mrs Burunou during this period could be attributed to the disclosure. She did not become aware of it until mid February 2014.
120. We will deal with the remaining disclosures 16 – 22 collectively. Some of that correspondence amounted to disclosures of information tending to show breach of legal obligation or health and safety. Those matters related which related to the claimant's own contract of employment did not amount

to qualifying disclosures. They were not made in the public interest. Other disclosures of information e.g breaches of procedure which could result in health and safety risks did amount to protected disclosures. However, our findings of fact in relation to all those matters are that Mrs Burunou was unaware of those disclosures at the relevant time and therefore she could not have been motivated by the disclosures which the claimant raised with others such as the respondent's Employee Relations Department, NHS England or with Tascor.

121. Whilst at some point in February 2014 Mrs Burunou did know that the claimant had made a complaint about her, she was unaware of the nature of the complaint. In our view a discriminator has to know sufficient about the nature of the complaint to understand that the complaint discloses information which tends to show information amounting to a protected disclosure before he or she can be held to have treated a person unfavourably because that person made a protected disclosure. Mrs Burunou did not have the requisite knowledge.
122. **Summary of our conclusions on the alleged disclosures.** We have found that the claimant made protected disclosures on 20th December 2013 by providing her employer with her report of the events on 17th December 2013. We have found no protected disclosures were made before this date. We have found that this document was not provided to Mrs Burunou until mid-February 2014 therefore she did not have knowledge of the protected disclosure until this time. No conduct prior to this date by Mrs Burunou can be linked to any protected disclosure. It is not strictly necessary to make any findings of facts on any alleged detriments before this date but for completeness we considered it appropriate to deal with all alleged detriments.
123. Findings of fact on the alleged detriments. There is significant dispute regarding the incidents relied upon as detriments. The facts are not agreed. Essentially there are different versions of what occurred on the various dates in question. In general we preferred the evidence of Mrs Burunou because her evidence was more consistent throughout and supported in some cases with contemporaneous documentation.
124. We did not find the claimant convincing or credible in her evidence on her relationship with Mrs Burunou, for example, the claimant contends that she was subjected to bullying by Mrs Burunou throughout the period in question and for some period of time before. The claimant's evidence has been inconsistent as to when she felt that the relationship began to breakdown. On her own admission the claimant herself was taking part in friendly interaction with Mrs Burunou on a personal level which indicated there was friendship between them and mutual support. Examples of this are an approach the claimant made to Mrs Burunou for a loan in the autumn of 2013. Her request was granted. Mrs Burunou lent the claimant money. She contacted Mrs Burunou out of office hours at home in the autumn of 2013 seeking advice and support on personal matters. This indicated that she trusted Mrs Burunou to give her advice and guidance on her personal difficulties. Both sent the other birthday cards and gifts with affectionate messages.

125. We therefore find that although the claimant contends that her relationship with Mrs Burunou was a difficult one for a significant period of time, this was part and parcel of their friendship, which blew hot and cold.
126. The claimant disclosed to Mrs Burunou as part of that friendly relationship personal difficulties such as conflict with her partner and conflict with her mother and sister. She also disclosed that she had an eating disorder and was planning to attend a residential programme to address this. She and Mrs Burunou discussed diet. Mrs Burunou is diabetic and in the context of their respective eating patterns they had general discussions regarding appropriate diet and what worked for them.
127. The claimant disclosed to Mrs Burunou that she was a recovering alcoholic and had been sober for twelve years. When she started drinking again she approached Mrs Burunou for support. Mrs Burunou had disclosed to the claimant that she herself had been alcoholic and had attended meetings at Alcoholics Anonymous (AA). In response to a request for support Mrs Burunou offered to accompany the claimant to AA meetings to address the claimant's resumed drinking. During the period when the claimant's contends that she bullied by Mrs Burunou, Mrs Burunou attended AA meetings with the claimant as her supporter on some three occasions.
128. Leading up to the claimant's wedding in May 2013 she sought advice from Mrs Burunou on her wedding outfit and even asked Mrs Burunou to accompany her to look at a wedding dress. After her wedding she disclosed to Mrs Burunou that she felt she had made a mistake in marrying her partner. In the autumn she told Mrs Burunou that she felt she was on a verge of a breakdown. We find that Mrs Burunou offered her support and guidance. We find that the claimant approached Mrs Burunou for support in her personal life rather than raising these difficulties with her employer Tascor. We find that Mrs Burunou considered that the claimant was a competent nurse and had no concerns regarding her clinical performance. However, she felt that the claimant's personal difficulties impacted on her mood from time to time and significantly on her interaction with Mrs Burunou in the latter part of 2013.
129. The first detriment relied upon is that it is contended in July 2013 Mrs Burunou intimidated the claimant by pointing at her badge which was designated manager. We reject the claimant's evidence that this occurred in the manner which she contends. It was not documented by her at the time and no date has been asserted. There is no corroborating evidence.
130. We preferred Mrs Burunou's evidence that on one occasion when the claimant was present at The Bridge with others someone, (not the claimant) asked who was going to make the coffee for the team. At that point Mrs Burunou pointed to herself and her badge as being the coffee maker and commented "*why do I as a manager always make the coffee?*" This was a jocular comment not directed to the claimant. It did not amount to a detriment.
131. Detriment 2. The claimant contends that in July 2013 Mrs Burunou said to her "*may I remind you that as I am the manager I can have you removed from the building.*" There is no evidence to support this contention. We did

not find the claimant's evidence credible and we find that this did not happen.

132. Detriment 3. The claimant alleges that following disclosures on 26 July 2013 Mrs Burunou sent regular emails to the claimant's line manager reporting and making allegations against the claimant. We find as follows:
133. As the respondent was not the claimant's manager, the arrangement agreed between the respondent and Tascor was that if any employment related matters arose such as time keeping, then at Tascor's request, Mrs Burunou would phone or contact Tascor by email, to advise of any issues. When the claimant did not turn up on time (She was meant to be at the Bridge by no later than 9.00) an email would be sent or other contact made to advise Tascor of the issue so that it could deal with it. For example, the previous provider of Forensic Services Reliance was provided with information about a management issue relating to the claimant which it resolved directly with her.
134. The emails upon which the claimant relies as detriments were sent to the claimant's manager advising of her late attendance or other management issues in accordance with the agreed process. We do not accept the claimant's contention that reporting her issues arose only after the meeting on the 26 July 2013. We find that there is no connection whatsoever between the emails sent and anything that was discussed on 26 July. We found that in any event the claimant's contribution to the meeting did not amount to a protected disclosure.
135. Detriment 5. The claimant contends that between July and December 2013 Mrs Burunou regularly commented on what the claimant was eating especially if she was eating carbohydrates. We refer to our findings of fact on the background to the relationship between the claimant and Mrs Burunou. We have found that there were discussions regarding food in the context of their personal interactions. In that context any comment on what the claimant was eating could not have amounted to a detriment. We find that the claimant was participating in a personal dialogue about dieting in general discussions about what she was eating. These were two way discussions between them.
136. Detriment 6. The claimant contends that between July and December 2013 Mrs Burunou commented on what the claimant wore to work such as "*you may want to consider getting a new bra and I much prefer you in trousers that you were wearing on x day.*" We find that both the claimant and Mrs Burunou would have discussed clothes in general. We refer to our findings on the background. Shortly before the claimant's wedding she asked Mrs Burunou's for advice on her wedding dress.
137. We find that there was no comment by Mrs Burunou that the claimant might want to consider getting a new bra. It is unlikely that Mrs Burunou would have known or seen what the claimant was wearing as underwear. Any discussion about clothing was in the context of their personal relationship. There was an occasion when Mrs Burunou commented on a pair of trousers which the claimant wore which she admired. As a result of which both Mrs Burunou and another colleague purchased a similar pair. Any discussion

which took place regarding clothing was in the context of their personal interaction and could not have amounted to a detriment.

138. Detriment 7. The claimant contends that in September 2013 Mrs Burunou shouted at her "*where do you think you are going.*" We refer to our findings on credibility. We reject the claimant's evidence that Mrs Burunou shouted at her in September 2013. There was no contemporaneous documentary evidence that any such incident occurred. Very shortly after that alleged incident the claimant confided in Mrs Burunou about her personal difficulties and they exchanged birthday cards and gifts. A friendly interaction is inconsistent with her contention that she was being bullied by Mrs Burunou.
139. Detriment 8. The claimant contends that in October/November 2013 Mrs Burunou shouted at her in connection with the ringing of a mobile phone "*what is all that noise, turn your phone off*" and that her reaction changed when she discovered it was not the claimant's phone. We did not find the claimant's evidence convincing or credible. We conclude that that incident did not happen. There was an earlier incident regarding the claimant's mobile telephone sometime before May 2013 which the claimant raised with Mrs Burunou relatively close to the time that it occurred and for which Mrs Burunou apologised.
140. The claimant's contentions that she was being bullied by Mrs Burunou during this period are not supported by the contemporaneous documents for example, on 19 November 2013, she attended a meeting with Sarah Lindsey of Tascor to discuss her request (the claimant's request) to reduce her working hours. At no point during that meeting did the claimant indicate that she was having any particular difficulties with Mrs Burunou at that time or that this was the reason for her request to reduce her hours. An ideal opportunity was afforded to the claimant at the end of that meeting when she was asked "*is there anything else you want to talk about? Any other issues you would like to raise, any suggestions. Is there anything else the Company could do for you to help you considering I had to refuse your request.*" Had the claimant genuinely considered that she was being bullied by Mrs Burunou during this period she would have raised those matters at that point. She did not do so.
141. The claimant resigned on notice. She had decided that she wished to work on a sub contractor basis under the umbrella of Tascor. After her notice expired she intended to offer her services as a free-lance Forensic Nurse to Tascor to work on occasions which were suitable and convenient for both her and Tascor. Her notice was to expire on 26th February 2014.
142. Detriment 9. The claimant contends that from 7 October 2013 onwards Mrs Burunou made statements about the claimant that she knew to be untrue and misleading including stating that staff members asked whether the claimant was bipolar, that she had a current eating disorder, that this was not the first time that she stormed/walked out, she was slipping into depression due to weight gain. She shaved her hair off before her wedding, she is an alcoholic who is drinking at work and drinking while taking anti depressants.

143. We find as follows:

144. On 7 October 2013 Mrs Burunou sent an email to Sarah Lindsey to alert her to an operational difficulty regarding the claimant's sickness absence and to notify that the claimant had told her that she was slipping into depression due to her weight gain. She mentioned the claimant's eating disorder and also that she had taken up drinking alcohol again after twelve years of sobriety, she made no allegation that the claimant was drinking at work. She commented that Ms Lindsey would be following Tascor's internal process regarding these matters.
145. We are satisfied that the commencement of the email chain was out of concern for the claimant who had confided in Mrs Burunou regarding her personal and health difficulties. The second email that day detailed further information regarding the claimant's health and her interaction with a vulnerable client. The telephone interaction between the claimant and Mrs Burunou after the initial email in the morning Mrs Burunou noted that the telephone call she received amplified her concerns for the claimant's wellbeing.
146. The personal and health issues disclosed to Mrs Burunou by the claimant were done on a confidential basis in the context of their friendship, therefore to raise those matters with her employer could have been perceived by the claimant to be a detriment because the personal information which the claimant gave was given in confidence. It was then disclosed to a wider audience by Mrs Burunou namely to Tascor and to Ms Brooks. However we are satisfied in the context of their personal relationship Mrs Burunou did indeed pass on the information out of concern for the claimant and not because she had raised any breaches of protocol or any other concerns. In support of that we note that around this time Mrs Burunou was sending emails praising the claimant's work where praise was deserved.
147. Detriment 10. The claimant contends that on 17 December 2013 Mrs Burunou told the claimant she was in charge and would have her removed from the building. This alleged detriment relates to the events and the interaction between the claimant and Mrs Burunou on 17 December at the Bridge. We preferred Mrs Burunou's version of events as to what occurred on the morning of 17 December. This is because there is contemporaneous documentary evidence in the way of emails which were sent to Ms Lindsey of Tascor, to Ms Brooks and to Jenny Tromans of Avon and Somerset Constabulary. The claimant's version of events was provided a few days later on 20 December. We refer to our earlier findings in relation to how the incident on 17 December started. We find these to be the follow facts as to how the events unfolded.
148. After the claimant arrived late Mrs Burunou said to her "*can I just remind you of the importance of putting things in your diary because we didn't know where you were this morning.*" We find that the claimant did respond aggressively, that she shouted at Mrs Burunou, she insisted she had put the appointment (the supervision in her diary) and when Mrs Burunou suggested that check the diary together she continued to shout that she may not have saved the entry. She refused to listen to Mrs Burunou and told her to go away.
149. Mrs Burunou responded telling the claimant not to speak to her in that manner and the claimant screamed back, stating that she would speak to

Mrs Burunou in way she wanted as Mrs Burunou was not her line manager. Mrs Burunou told her that she was going to ring Ms Lindsey as she did not think that the claimant should be at work seeing clients in this state. Mrs Burunou left the room to speak to Ms Lindsey.

150. The claimant then stormed out of the Bridge shouting “ *I am gone then*” banging doors and causing upset to other staff at The Bridge. Mrs Burunou emailed a report of what had occurred at 10.59 that day to Ms Lindsey and copied in Ms Tromans of Avon and Somerset Constabulary. We find that the account which Mrs Burunou provided to Ms Lindsey and Jenny Tromans was a true statement of the way in which the event occurred. We reject the claimant’s contention that Mrs Burunou told her that she was in charge and would have her removed from the building.
151. Detriment 11. Having provided to Ms Tromans and Ms Lindsey with a report of the incident on 17th December 2013, Ms Burunou was then required by Ms Tromans to provide additional information about the claimant. This arose because after the initial email at 10.59 it is apparent that a conversation must have taken place between Mrs Burunou and Sarah Lindsey that morning when Ms Lindsey suggested that in view of the altercation it would be appropriate for the claimant to be based at Tascor’s premises in Portishead rather than at The Bridge and only go to The Bridge when she required to carry out an examination.
152. Mrs Burunou’s email to Sarah Lindsey at 11.14 that morning indicates that she was keen on the idea that had been proposed by Ms Lindsey and asked Ms Tromans (copying her into the email) whether that was contractually possible. Mrs Burunou’s email ends with the following words “*on a personal level, I do not think I should have to be attacked in such a manner in front of my own staff and given Michelle’s continued instability this is likely to reoccur. It has left me feeling quite shaky.*” We are satisfied that this was a genuine expression of her feelings at the time.
153. It is apparent from the email correspondence that the removal of the claimant from the Tascor contract was initially proposed not by Mrs Burunou, but by Ms Tromans by an email at 12.37 on 17th December. In that email she made reference to the contract between the Police Authority and Tascor, Ms Tromans proposed as follows “*Following this morning’s incident I think it would be reasonable to request that Michelle is removed from the contract please let me know how you want to proceed with this and if you want me to formally request Tascor that Michelle is removed from the contract?*”
154. Thereafter Mrs Burunou spoke to Ms Brooks who discussed the position with the respondent’s HR Department as a result Mrs Burunou replied to Ms Tromans as follows: “*I have discussed the below with my line manager who in turn has discussed with Trust’s HR. We all agree that Michelle should be removed from the contract. Are you able to sort that for me please?*”
155. Following that email exchange Ms Tromans asked Mrs Burunou to provide further information which was relevant to the claimant being removed from the contract. Mrs Burunou did so on 19 December raising matters that had occurred throughout 2013. The summary she gave in that email provided further information relating to matters which Mrs Burunou knew were true or

believed to be true. They were either matters disclosed to her by the claimant, witnessed by Mrs Burunou or matters and comments raised by others.

156. We find that the information was provided because Ms Tromans requested it not because of any matters that the claimant raised by way of disclosures.
157. Detriment 12. This is contended to be Mrs Burunou's actions in materially influencing the decision to remove the claimant from the contract on a temporary basis and then on a permanent basis. It is contended that she was allowed or authorise to decide on behalf of the police that the claimant should be removed and that she had the role either of approving, or actively recommending the decision that the claimant should be removed permanently. It is contended that Mrs Burunou made the decision that was ratified and approved by the police. We find as follows:
158. The decision to temporarily remove the claimant from the contract and later to suspend her was taken by Ms Crew after discussion with Ms Tromans. We are satisfied that the only matters which Ms Crew took into account were the incident described on 17 December and which Tascor had agreed amounted to unacceptable behaviour, inappropriate conduct and information which was only made known to Sarah Crew at that point that the claimant had been in a telephone contact with a vulnerable client.
159. We found Ms Crew an impressive, credible witness. We find that she was careful to separate out from the information provided to her all personal matters referred to in Mrs Burunou's email and the further information she considered relevant. We find that she did so. In coming to her decision she disregarded Mrs Burunou's preference that the claimant be removed from the contract. As to the permanent removal of the claimant from the contract we are satisfied that the decision was Ms Crew's alone, this was based solely on the claimant's behaviour on the 17 December and her contact with a vulnerable client and nothing else. We find that she was not influenced in any way by Mrs Burunou's preference or the personal matters which were passed on by Mrs Burunou.
160. Detriment 13. This is alleged to be the failure to investigate the allegations made by Mrs Burunou prior to removing the claimant from the contract on 19 December including a failure to interview the claimant and a failure to interview any witnesses.
161. Detriment 14. This is alleged to be a failure to invite the claimant to a meeting on 27 March 2015. This was when the permanent removal from her contract was determined. Detriments 13 and 14 are alleged to have been committed by Ms Crew and Ms Tromans respectively. They were the individuals concerned with those decisions. We find as follows:
162. The decision in relation to any investigation prior to the temporary removal of the claimant was taken by Ms Crew in discussion with Ms Tromans. Having made our findings of fact on the lack of material influence by Mrs Burunou this allegation is not made out. Discussion did take place between Tascor and Ms Tromans on behalf of the police regarding interviewing witnesses to the incident on 17th December. Enquiries were made as to whether witnesses would give statements. The individuals indicated that they

were not prepared to give statements at that time. A failure to interview witnesses or the claimant by Ms Tromans or Ms Crew was not influenced in any way by Mrs Burunou.

163. Detriment 14. The failure to invite the claimant to the meeting on 27 March relates to a decision taken by Ms Tromans. We find that this was not influenced by Mrs Burunou. The meeting on 27 March was to discuss the contract between Tascor and the police and other matters including whether the claimant could remain assigned to it. It was Ms Tromans' practice that if the part of the meeting involved an individual personal situation, that individual would not be present. For example, for part of the meeting on 27th March 2014 which related to matters concerning Dr Grant's professional issues he was excluded from that part of the meeting when his situation was discussed. The claimant was not called to the meeting because Ms Tromans considered that it was not appropriate to do so. Mrs Burunou had no influence on the decision as to who should be invited to the meeting.
164. Detriment 15 is alleged to be that Mrs Burunou made misleading statements on 27 March 2014 that were intended to and did contribute to the claimant's removal from the contract.
165. There is no record of what each individual said at the meeting on 27 March in relation to the claimant's position. We find that both Dr Young and Dr Grant assertively protested their case that the claimant should be allowed to work on the contract. Mrs Burunou on behalf of the respondent put forward the respondent's stance. There is no evidence that Mrs Burunou put forward misleading or untrue statements at that meeting, although, it is likely that she put forward her view that the claimant was not a fit and proper person to work under the contract because of the incident of 17 December.
166. In summary, we therefore find that whilst the claimant made certain protected disclosures, either those disclosures were unknown to Mrs Burunou at the relevant time and did not in any way, and could not in any way have influenced her conduct towards the claimant and the alleged detriments are not made out. The claim therefore fails and is dismissed.
167. On the out of time point having found that there was no detriment on the 27 March 2014 (the last event in time) had there been any earlier detriments they would have been presented out of time and the claimant does not contend that it was not reasonably practicable for any claim to have been presented in time.

Employment Judge O Harper

Date: 24th April 2017

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

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FOR THE TRIBUNAL OFFICE